

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter Of:	)	
	)	
Petitions For Forbearance From Application Of	)	CC Docket No. 96-149
Section 272 Of The Communications Act	)	DA 57-599
To Previously Authorized Services	)	

**NYNEX REPLY COMMENTS<sup>1</sup>**

**I. INTRODUCTION**

The structural separation requirements in Section 272 of the Communications Act<sup>2</sup> should not be imposed upon BOC E911 services having an interLATA component.<sup>3</sup> Such regulation is unnecessary and would disrupt the

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<sup>1</sup> The NYNEX Telephone Companies ("NYNEX") are New England Telephone and Telegraph Company and New York Telephone Company.

<sup>2</sup> Added by the Telecommunications Act of 1996 (the "Act").

<sup>3</sup> Advanced 911 systems route an emergency 911 call to the Public Safety Answering Point ("PSAP") nearest to the caller's location, and permit the PSAP to quickly find out the calling party's number, location and related critical information in order to help emergency services personnel respond as fast as possible. See Revision Of The Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Notice Of Proposed Rulemaking ("NPRM") released October 19, 1993, 9 FCC Rcd 6170, paras. 5-6.

BOCs' continuous and efficient provision of these emergency services which are vital to the public interest.

## **II. THE RECORD SUPPORTS FORBEARANCE FROM SECTION 272 AFFILIATE REQUIREMENTS FOR BOC INTERLATA E911 SERVICES**

BOCs have prior authorization by the MFJ Court to offer E911 services on an interLATA basis.<sup>4</sup> In its Non-Accounting Safeguards Order,<sup>5</sup> the Commission held that previously authorized interLATA information services are not exempt from Section 272 structural separation.

To the extent E911 is viewed as an interLATA information service, the Commission should forbear from applying Section 272 structural separation. As shown by petitioners<sup>6</sup> in this matter: requiring the transfer and restructuring of this service out of the BOC to a Section 272 affiliate would cause significant disruption and cost increases; requiring this service to be provided through a separate affiliate is not necessary to ensure reasonable rates or to protect consumers; and forbearance is clearly in the public interest. Indeed, the DOJ has determined that

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<sup>4</sup> See U.S. v. Western Electric Co., Civ. Act. No. 82-0192, 1984 U.S. Dist. LEXIS 10566 (D.D.C. Feb. 6, 1984); Letter from Constance K. Robinson, Chief, Communications & Finance Section, U.S. Department of Justice ("DOJ"), Antitrust Division to Alan F. Ciampariero, Pacific Telesis Group (Mar. 27, 1991), citing Motion Of The United States For A Waiver Of The Modification Of Final Judgment To Permit The BOCs To Provide MultiLATA 911 Service (Nov. 17, 1988).

<sup>5</sup> CC Docket No. 96-149, released December 24, 1996, paras. 77-79.

<sup>6</sup> See Public Notice released March 25, 1997, inviting comments on petitions for forbearance filed by Bell Atlantic, Pacific Telesis Group, Southwestern Bell Telephone Company and U S WEST.

“[a]llowing the BOCs to provide interLATA 911 services and E911 service is in the public interest for it permits customers to reach providers of emergency services conveniently and efficiently.”<sup>7</sup>

Moreover, since E911 services are vital to the public interest, there is a long regulatory history of not interfering with the smooth and continuous availability of these services from BOCs, and it would be wise to maintain this approach.<sup>8</sup> As the Commission has previously declared: “It is difficult to identify a nationwide wire or radio communication service more immediately associated with promoting safety of life and property than 911.”<sup>9</sup> Indeed, Congress recognized that BOCs

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<sup>7</sup> Letter dated March 27, 1991 from Constance K. Robinson, supra, p. 1. In granting the BOCs authority to provide E911 service, the MFJ Court previously concluded that such an offering would “not endanger competition.” U.S. v. Western Electric Co., 1984 U.S. Dist. LEXIS 10566, supra. Further, the DOJ determined that BOC provision of interLATA E911 service “does not present any threat to competition among interexchange service providers.” Letter dated March 27, 1991 from Constance K. Robinson, supra, p. 1.

<sup>8</sup> Even AT&T would not oppose a narrow forbearance given “the unique nature of the E911 services.” See AT&T Comments on Bell Atlantic Petition For Forbearance, pp. 2-3. MCI’s opposition to forbearance ignores the practical need to continue providing these services on an integrated basis. MCI goes so far as to assert (pp. 2-3), without legal basis, that the FCC is legally disabled from granting any petition for forbearance in this matter. MCI is plainly wrong, as the Section 10 standards which mandate FCC forbearance have been specifically addressed and met by the petitioners.

<sup>9</sup> Docket 94-102 NPRM released October 19, 1994, para. 7. See also Procedures For Implementing The Detariffing Of Customer Premises Equipment And Enhanced Service (Second Computer Inquiry), CC Docket No. 81-893, Seventh Report And Order released January 23, 1986, 1986 FCC LEXIS 4115, para. 27 (“The Common Carrier Bureau has previously concluded that the provision of 911 emergency service directly promotes the statutory objective embedded in Section 1 of the Communications Act, 47 U.S.C. § 151, of ‘promoting safety of life and property through the use of wire and radio communications.’”)

would continue to offer E911 services, as the Act requires BOC-offered access or interconnection to include non-discriminatory access to E911 as a checklist item for long distance entry.<sup>10</sup>

Finally, given the need for a consistent national approach to E911, the Commission should grant blanket forbearance to all similarly situated BOCs including NYNEX. Should the Commission not address blanket forbearance, the Commission should grant NYNEX's petition for forbearance which is being filed concurrently.

### **III. CONCLUSION**

The Commission need not and should not apply Section 272 structural separation requirements to the BOCs' interLATA E911 services.

Respectfully submitted,

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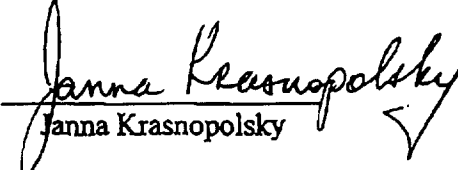
Dated: May 6, 1997

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<sup>10</sup> Section 271(c)(2)(B)(vii)(I).

**CERTIFICATE OF SERVICE**

I, Janna Krasnopsky, hereby certify that on the 6th day of May, 1997, a copy of the foregoing **NYNEX REPLY COMMENTS** in CC Docket No. 96-149 (DA 57-599) was served on each of the parties listed on the attached Service List by first class U.S. mail, postage prepaid.

  
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